

**TITLE 78 RECODIFICATION AND
REVISION**

2008 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

Miscellaneous Provisions being moved from Title 78

Highlighted Provisions:

This bill:

- ▶ 78-3c-1, et seq, Confidential Communications for Sexual Assault Act, from Title 78 to 77-38-201, et seq.
- ▶ 78-3e-1, et seq, Reporting School-Related Controlled Substance Abuse, from Title 78 to 53A-11-1301, et seq.
- ▶ 78-61-101, et seq, Profits from Crime Memorabilia Act, from Title 78 to 77-38-301.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

77-38-301, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

53A-11-1301, (Renumbered from 78-3e-1, as last amended by Laws of Utah 1988, Chapter 2)

53A-11-1302, (Renumbered from 78-3e-2, as enacted by Laws of Utah 1986, Chapter 96)

53A-11-1303, (Renumbered from 78-3e-3, as enacted by Laws of Utah 1986, Chapter 96)

53A-11-1304, (Renumbered from 78-3e-4, as enacted by Laws of Utah 1986, Chapter 96)

53A-11-1305, (Renumbered from 78-3e-5, as enacted by Laws of Utah 1986, Chapter 96)

77-38-201, (Renumbered from 78-3c-1, as enacted by Laws of Utah 1983, Chapter 158)

77-38-202, (Renumbered from 78-3c-2, as enacted by Laws of Utah 1983, Chapter 158)

77-38-203, (Renumbered from 78-3c-3, as enacted by Laws of Utah 1983, Chapter 158)

77-38-204, (Renumbered from 78-3c-4, as last amended by Laws of Utah 2000, Chapter 1)

77-38-302, (Renumbered from 78-61-101, as enacted by Laws of Utah 2004, Chapter 368)

77-38-303, (Renumbered from 78-61-102, as enacted by Laws of Utah 2004, Chapter 368)

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53A-11-1301**, which is renumbered from Section 78-3e-1 is renumbered and amended to read:

Part 13. Reporting School-Related Controlled Substance Abuse

[78-3e-1]. 53A-11-1301. Definitions.

(1) The definitions in Sections 58-37-2, 58-37a-3, and 58-37b-2 apply to this ~~chapter~~ part.

(2) As used in this ~~chapter~~ part:

(a) "Prohibited act" means an act punishable under Section 53A-3-501, Section 58-37-8, Section 58-37a-5, or Title 58, Chapter 37b.

(b) "School" means a public or private elementary or secondary school.

Section 2. Section **53A-11-1302**, which is renumbered from Section 78-3e-2 is renumbered and amended to read:

[78-3e-2]. 53A-11-1302. Reporting of prohibited acts affecting a school -- Confidentiality.

(1) A person who has reasonable cause to believe that an individual has committed a prohibited act shall immediately notify:

(a) the nearest law enforcement agency~~;~~;

(b) the principal~~[-or]~~;

(c) an administrator of the affected school~~[, or]~~;

(d) the superintendent of the affected school district; or

(e) an administrator of the affected school district.

(2) If notice is given to a school official, the official may authorize an investigation into allegations involving school property, students, or school district employees.

(3) School officials may refer a complaint of an alleged prohibited act reported as occurring on school grounds or in connection with school-sponsored activities to an appropriate law enforcement agency. Referrals shall be made by school officials if the complaint alleges the prohibited act occurred elsewhere.

(4) The identity of persons making reports pursuant to this section shall be kept confidential.

Section 3. Section **53A-11-1303**, which is renumbered from Section 78-3e-3 is renumbered and amended to read:

~~[78-3e-3].~~ **53A-11-1303. Immunity from civil or criminal liability.**

Any person, official, or institution, other than a law enforcement officer or law enforcement agency, participating in good faith in making a report or conducting an investigation under the direction of school or law enforcement authorities under this ~~[chapter]~~ part, is immune from any liability, civil or criminal, that otherwise might result by reason of that action.

Section 4. Section **53A-11-1304**, which is renumbered from Section 78-3e-4 is renumbered and amended to read:

~~[78-3e-4].~~ **53A-11-1304. Admissibility of evidence in civil and criminal actions.**

(1) Evidence relating to violations of this ~~[chapter]~~ part which is seized by school authorities acting alone ~~[and]~~, on their own authority, and not in conjunction with or at the behest of law enforcement authorities is admissible in civil and criminal actions.

(2) A search under this section must be based on at least a reasonable belief that the search will turn up evidence of a violation of this ~~[chapter]~~ part. The measures adopted for the search must be reasonably related to the objectives of the search and not excessively intrusive in light of the circumstances, including the age and sex of the person involved and the nature of the infraction.

Section 5. Section **53A-11-1305**, which is renumbered from Section 78-3e-5 is

94 renumbered and amended to read:

95 **[78-3c-5]. 53A-11-1305. Board rules to ensure protection of individual rights.**

96 The State Board of Education and local boards of education shall adopt rules to
97 implement this ~~[chapter]~~ part. The rules shall establish procedures to ensure protection of
98 individual rights against excessive and unreasonable intrusion.

99 Section 6. Section **77-38-201**, which is renumbered from Section 78-3c-1 is
100 renumbered and amended to read:

101 **Part 2. Confidential Communications for Sexual Assault Act**

102 **[78-3c-1]. 77-38-201. Title.**

103 This ~~[act shall be]~~ part is known and ~~[may be]~~ cited as the "Confidential
104 Communications for Sexual Assault Act."

105 Section 7. Section **77-38-202**, which is renumbered from Section 78-3c-2 is
106 renumbered and amended to read:

107 **[78-3c-2]. 77-38-202. Purpose of act.**

108 It is the purpose of this ~~[act]~~ part to enhance and promote the mental, physical and
109 emotional recovery of victims of sexual assault and to protect the information given by victims
110 to sexual assault counselors from being disclosed.

111 Section 8. Section **77-38-203**, which is renumbered from Section 78-3c-3 is
112 renumbered and amended to read:

113 **[78-3c-3]. 77-38-203. Definitions.**

114 As used in this ~~[chapter]~~ part:

115 (1) "Confidential communication" means information given to a sexual assault
116 counselor by a victim and includes reports or working papers made in the course of the
117 counseling relationship.

118 (2) "Rape crisis center" means any office, institution, or center assisting victims of
119 sexual assault and their families which offers crisis intervention, medical, and legal services,
120 and counseling.

121 (3) "Sexual assault counselor" means a person who is employed by or volunteers at a
122 rape crisis center who has a minimum of 40 hours of training in counseling and assisting
123 victims of sexual assault and who is under the supervision of the director or designee of a rape
124 crisis center.

(4) "Victim" means a person who has experienced a sexual assault of whatever nature including incest and rape and requests counseling or assistance regarding the mental, physical, and emotional consequences of the sexual assault.

Section 9. Section **77-38-204**, which is renumbered from Section 78-3c-4 is renumbered and amended to read:

[78-3c-4]. 77-38-204. Disclosure of confidential communications.

The confidential communication between a victim and a sexual assault counselor is available to a third person only when:

(1) the victim is a minor and the counselor believes it is in the best interest of the victim to disclose the confidential communication to the victim's parents;

(2) the victim is a minor and the minor's parents or guardian have consented to disclosure of the confidential communication to a third party based upon representations made by the counselor that it is in the best interest of the minor victim to make such disclosure;

(3) the victim is not a minor, has given consent, and the counselor believes the disclosure is necessary to accomplish the desired result of counseling; or

(4) the counselor has an obligation under Title 62A, Chapter 4a, Child and Family Services, to report information transmitted in the confidential communication.

Section 10. Section **77-38-301** is enacted to read:

77-38-301. Title.

This part is known as the Profits from Crime Memorabilia Act.

Section 11. Section **77-38-302**, which is renumbered from Section 78-61-101 is renumbered and amended to read:

[78-61-101]. 77-38-302. Definitions.

As used in this ~~chapter~~ part:

(1) "Conviction" means an adjudication by a federal or state court resulting from a trial or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity, or not guilty but mentally ill regardless of whether the sentence was imposed or suspended.

(2) "Fund" means the Crime Victim Reparation Fund created in Section 63-63a-4.

(3) "Memorabilia" means any tangible property of a person convicted of a first degree or capital felony, the value of which is enhanced by the notoriety gained from the conviction.

(4) "Profit" means any income or benefit over and above the fair market value of the

156 property that is received upon the sale or transfer of memorabilia.

157 Section 12. Section **77-38-303**, which is renumbered from Section 78-61-102 is

158 renumbered and amended to read:

159 **~~[78-61-102].~~ 77-38-303. Profit from sale of memorabilia -- Deposit in**

160 **Crime Victim Reparation Fund -- Penalty.**

161 (1) Any person who receives a profit from the sale or transfer of memorabilia shall

162 remit to the fund:

163 (a) a complete, itemized accounting of the transaction, including:

164 (i) a description of each item sold;

165 (ii) the amount received for each item;

166 (iii) the estimated fair market value of each item; and

167 (iv) the name and address of the purchaser of each item; and

168 (b) a check or money order for the amount of the profit, which shall be the difference

169 between the amount received for the item and the estimated fair market value of the item.

170 (2) Any person who willfully violates Subsection (1) may be assessed a civil penalty of

171 up to \$1,000 per item sold or transferred or three times the amount of the unremitted profit,

172 whichever is greater.